

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA**

Maria Diane Soave,

Plaintiff,

vs.

Kilolo Kijakazi, Acting Commissioner
of Social Security,

Defendant.

Civil Action No. 0:21-1559-RMG

ORDER

This matter comes before the Court for judicial review of the final decision of the Commissioner of Social Security denying Plaintiff's application for Disability Insurance Benefits ("DIB"). In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to the United States Magistrate Judge for pretrial handling. The Magistrate Judge issued a Report and Recommendation ("R & R") on May 5, 2022 recommending that the decision of the Commissioner be reversed and remanded to the agency because the Administrative Law Judge failed to make a function by function analysis for determining Plaintiff's RFC when a material aspect of her functional capacity, the ability to sit, was in dispute. (Dkt. No. 19 at 3-7). The Commissioner has advised the Court that she does not intend to file objections to the R & R. (Dkt. No. 20).

The Court has reviewed the R & R and the record evidence and finds that the Magistrate Judge has ably addressed the factual and legal issues in this matter. Therefore, the Court **ADOPTS** the Report and Recommendation as the order of this Court, **REVERSES** the decision of the Commissioner pursuant to Sentence Four of 42 U.S.C. § 405(g), and **REMANDS** the

matter to the Commissioner for further proceedings consistent with this order. In light of the protracted nature of Plaintiff's application for disability benefits, dating from 2014, Defendant is directed to conduct an administrative hearing on remand and issue a decision by an Administrative Law Judge within 120 days and a final agency decision within 150 days.

AND IT IS SO ORDERED.

S/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

Charleston, South Carolina
May19, 2022